

## CONFERENCE COMMITTEE REPORT DIGEST FOR EHB 1689

**Citations Affected:** IC 4-21.5-2-6; IC 12-7-2-149.1; IC 12-15-2-20; IC 12-17.2; IC 12-17.6-1-6.

**Synopsis:** Child care violations. Conference committee report for EHB 1689. Resolves a statutory conflict in the definition of "provider" that applies to the law concerning child care. Provides for emergency closure of a child care home or child care center for certain violations. Requires national criminal history background checks for child care license applicants. Requires the division of family and children to provide an Internet site through which the public may obtain information concerning licensed child care providers. Requires the division of family and children to publish notice and provide written notice to the parent or guardian of a child enrolled at a child care center or child care home of certain actions. Requires certain postings by a child care center or child care home. Makes a technical change. **(This conference committee report resolves a statutory conflict by: (1) repealing a section containing conflicting definitions of "provider" in the child care law; (2) amending the definition of "provider" for purposes of the: (a) child care law generally, to refer to a person who operates a regulated child care center or home; and (b) child care and development fund federal voucher program law specifically, to refer to a person who directly receives reimbursement for child care under the voucher program; and (3) specifying, for purposes of the statute requiring the division of family and children to identify the type of provider to which an administrative rule or policy statement applies, that a "provider" is a person that provides child care. Makes a technical change.)**

**Effective:** July 1, 2003.

## CONFERENCE COMMITTEE REPORT

**MR. PRESIDENT:**

*Your Conference Committee appointed to confer with a like committee from the House upon Engrossed Senate Amendments to Engrossed House Bill No. 1689 respectfully reports that said two committees have conferred and agreed as follows to wit:*

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

- 1 Delete everything after the enacting clause and insert the following:
- 2 SECTION 1. IC 4-21.5-2-6, AS AMENDED BY P.L.1-2002,
- 3 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 4 JULY 1, 2003]: Sec. 6. (a) This article does not apply to the
- 5 formulation, issuance, or administrative review (but does, except as
- 6 provided in subsection (b), apply to the judicial review and civil
- 7 enforcement) of any of the following:
- 8 (1) **Except as provided in IC 12-17.2-4-18.7 and**
- 9 **IC 12-17.2-5-18.7**, determinations by the division of family and
- 10 children.
- 11 (2) Determinations by the alcohol and tobacco commission.
- 12 (3) Determinations by the office of Medicaid policy and planning
- 13 concerning recipients and applicants of Medicaid. However, this
- 14 article does apply to determinations by the office of Medicaid
- 15 policy and planning concerning providers.
- 16 (4) A final determination of the Indiana board of tax review.
- 17 (b) IC 4-21.5-5-12 and IC 4-21.5-5-14 do not apply to judicial review
- 18 of a final determination of the Indiana board of tax review.
- 19 SECTION 2. IC 12-7-2-149.1 IS ADDED TO THE INDIANA CODE
- 20 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 21 1, 2003]: **Sec. 149.1. "Provider" means the following:**
- 22 (1) **For purposes of IC 12-10-7, the meaning set forth in**

1 IC 12-10-7-3.

2 (2) For purposes of the following statutes, an individual, a  
3 partnership, a corporation, or a governmental entity that is  
4 enrolled in the Medicaid program under rules adopted under  
5 IC 4-22-2 by the office of Medicaid policy and planning:

6 (A) IC 12-14-1 through IC 12-14-9.5.

7 (B) IC 12-15, except IC 12-15-32, IC 12-15-33, and  
8 IC 12-15-34.

9 (C) IC 12-17-10.

10 (D) IC 12-17-11.

11 (E) IC 12-17.6.

12 (3) For purposes of IC 12-17-9, the meaning set forth in  
13 IC 12-17-9-2.

14 (4) Except as provided in subdivision (5), for purposes of  
15 IC 12-17.2, a person who operates a child care center or child  
16 care home under IC 12-17.2.

17 (5) For purposes of IC 12-17.2-3.5, a person that:

18 (A) provides child care; and

19 (B) is directly paid for the provision of the child care under  
20 the federal Child Care and Development Fund voucher  
21 program administered under 45 CFR 98 and 45 CFR 99.

22 The term does not include an individual who provides services  
23 to a person described in clauses (A) and (B), regardless of  
24 whether the individual receives compensation.

25 (6) For purposes of IC 12-17.4, a person who operates a child  
26 caring institution, foster family home, group home, or child  
27 placing agency under IC 12-17.4.

28 SECTION 3. IC 12-15-2-20 IS AMENDED TO READ AS  
29 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 20. (a) This section  
30 does not apply to a provider (as defined in ~~IC 12-7-2-149(2)~~).  
31 **IC 12-7-2-149.1(2)**).

32 (b) A person convicted of an offense under IC 35-43-5-7.1 is  
33 ineligible to receive Medicaid assistance under this article for ten (10)  
34 years after the conviction.

35 SECTION 4. IC 12-17.2-2-5.5, AS ADDED BY SEA 182-2003,  
36 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
37 JULY 1, 2003]: Sec. 5.5. (a) **Notwithstanding IC 12-7-2-149.1, as**  
38 **used in this section, "provider" means a person who provides child**  
39 **care under this article.**

40 (b) When the division adopts an administrative rule or a policy  
41 statement to administer this article, the division shall make the  
42 administrative rule or policy statement available to the public upon  
43 request.

44 ~~(b)~~ (c) When the division adopts an administrative rule or a policy  
45 statement to administer this article, the administrative rule or policy  
46 statement must specifically identify the type of provider to which the  
47 administrative rule or policy statement applies.

48 ~~(c)~~ (d) When the division provides information to the public  
49 concerning an administrative rule or a policy statement adopted by the  
50 division, each document provided must specifically identify the type of  
51 provider to which the administrative rule or policy statement applies.

SECTION 5. IC 12-17.2-2-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. The division shall perform the following duties:

- (1) Administer the licensing and monitoring of child care centers or child care homes in accordance with this article.
- (2) Ensure that a **national** criminal history background check of the applicant is completed **through the state police department under IC 5-2-5-15** before issuing a license.
- (3) Ensure that a criminal history background check of a child care ministry applicant for registration is completed before registering the child care ministry.
- (4) Provide for the issuance, denial, suspension, and revocation of licenses.
- (5) Cooperate with governing bodies of child care centers and child care homes and their staffs to improve standards of child care.
- (6) Prepare at least biannually a directory of licensees with a description of the program capacity and type of children served that will be distributed to the legislature, licensees, and other interested parties as a public document.
- (7) Deposit all license application fees collected under section 2 of this chapter in the child care fund.
- (8) Require each child care center or child care home to record proof of a child's date of birth before accepting the child. A child's date of birth may be proven by the child's original birth certificate or other reliable proof of the child's date of birth, including a duly attested transcript of a birth certificate.
- (9) Provide, not later than January 1, 2004, an Internet site through which members of the public may obtain the following information:**
  - (A) Information concerning violations of this article by a licensed child care provider, including:**
    - (i) the identity of the child care provider;**
    - (ii) the date of the violation; and**
    - (iii) action taken by the division in response to the violation.**
  - (B) Current status of a child care provider's license.**
  - (C) Other relevant information.**

SECTION 6. IC 12-17.2-4-3, AS AMENDED BY P.L.109-2002, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. (a) An applicant must apply for a child care center license on forms provided by the division.

(b) An applicant must submit the required information as part of the application.

(c) The applicant must submit with the application a statement attesting that the applicant:

- (1) has not been convicted of:
  - (A) a felony;
  - (B) a misdemeanor relating to the health or safety of children;
  - (C) a misdemeanor for operating a child care center without a license under section 35 of this chapter; or
  - (D) a misdemeanor for operating a child care home without a

license under IC 12-17.2-5-35; and

(2) has not been charged with:

(A) a felony;

(B) a misdemeanor relating to the health or safety of children;

(C) a misdemeanor for operating a child care center without a license under section 35 of this chapter; or

(D) a misdemeanor for operating a child care home without a license under IC 12-17.2-5-35;

during the pendency of the application.

(d) An applicant must submit the necessary information, forms, or consents for the division to ~~conduct~~ **obtain a national criminal history background check on the applicant through the state police department under IC 5-2-5-15.**

(e) The applicant must do the following:

(1) Conduct a criminal history check of the applicant's employees and volunteers.

(2) Maintain records of each criminal history check.

SECTION 7. IC 12-17.2-4-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 12. (a) A license for a child care center expires two (2) years after the date of issuance, unless revoked, modified to a probationary or suspended status, or voluntarily returned.

(b) A license issued under this chapter:

(1) is not transferable;

(2) applies only to the licensee and the location stated in the application; and

(3) remains the property of the division.

(c) A current license shall be publicly displayed.

(d) When a licensee submits a timely application for renewal, the current license shall remain in effect until the division issues a license or denies the application.

**(e) A licensee shall publicly display and make available, as a handout, written documentation of:**

**(1) any changes in the status of the licensee's license;**

**(2) a telephone number and an Internet site where information may be obtained from the division concerning:**

**(A) the current status of the licensee's license;**

**(B) any complaints filed with the division concerning the licensee; and**

**(C) violations of this article by the licensee; and**

**(3) a telephone number of the office of the Indiana child care resource and referral program of the county in which the child care center is located.**

SECTION 8. IC 12-17.2-4-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 14. (a) The division may grant a probationary license to a licensee who is temporarily unable to comply with a rule if:

(1) the noncompliance does not present an immediate threat to the health and well-being of the children;

(2) the licensee files a plan with the division or the state fire marshal to correct the areas of noncompliance within the

probationary period; and

(3) the division or state fire marshal approves the plan.

(b) A probationary license is valid for not more than six (6) months. The division may extend a probationary license for one (1) additional period of six (6) months.

(c) An existing license is invalidated when a probationary license is issued.

(d) At the expiration of the probationary license, the division shall reinstate the original license to the end of the original term of the license, issue a new license, or revoke the license.

(e) Upon receipt of a probationary license, the licensee shall return to the division the previously issued license.

**(f) The division shall:**

**(1) upon issuing a probationary license under this section, provide written notice to the licensee that the division will provide the notice required under subdivision (2); and**

**(2) not more than seven (7) days after issuing a probationary license under this section, publish notice under IC 5-3-1 and provide written notice to the parent or guardian of each child enrolled in the child care center of the:**

**(A) issuance of the probationary license; and**

**(B) reason for the issuance of the probationary license.**

SECTION 9. IC 12-17.2-4-18.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 18.7. (a) The division shall adopt rules under IC 4-22-2 to establish a list of violations of this article that would pose an immediate threat to the life or well-being of a child in the care of a licensee.**

**(b) If an employee or agent of the division determines that a violation described in subsection (a) exists, the division shall:**

**(1) issue an emergency or another temporary order under IC 4-21.5-4 requiring the licensee to immediately cease operation of the child care center; and**

**(2) contact the parent or guardian of each child enrolled in the child care center to inform the parent or guardian:**

**(A) that the division has issued an order to require the licensee to cease operation of the child care center; and**

**(B) of the reason for the order to cease operation;**

**pending the outcome of proceedings conducted under sections 20 through 22 of this chapter.**

**(c) An emergency or another temporary order issued by an employee or agent of the division must be approved by the director.**

**(d) An approval under subsection (c) may be communicated orally to the employee or agent issuing the order. However, the division shall maintain a written record of the approval.**

SECTION 10. IC 12-17.2-4-19 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 19. Except as provided in section 18.7 or 29 of this chapter, the division shall give a licensee thirty (30) calendar days written notice by certified mail of an enforcement action. The licensee shall also be provided with the**

1 opportunity for an informal meeting with the division. The licensee  
2 must request the meeting within ten (10) working days after receipt of  
3 the certified notice.

4 SECTION 11. IC 12-17.2-4-20 IS AMENDED TO READ AS  
5 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 20. (a) An  
6 administrative hearing concerning the decision of the division to  
7 impose a sanction under this chapter shall be provided upon a written  
8 request by the child care center. The request must be made within thirty  
9 (30) calendar days after receiving notice under section **18.7 or** 19 of  
10 this chapter. The written request must be made separately from an  
11 informal meeting request made under section 19 of this chapter.

12 (b) The administrative hearing shall be held within sixty (60)  
13 calendar days after receiving the written request.

14 SECTION 12. IC 12-17.2-4-27 IS AMENDED TO READ AS  
15 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 27. (a) After a license  
16 is revoked or suspended, the division shall **publish notice under**  
17 **IC 5-3-1 and** notify in writing each person responsible for the children  
18 in care ~~to ensure that those children are removed: that the license has~~  
19 **been revoked or suspended.**

20 (b) The written notice shall be sent to the last known address of the  
21 person responsible for the child in care and shall state that the license  
22 of the child care center has been revoked or suspended.

23 SECTION 13. IC 12-17.2-5-3, AS AMENDED BY P.L.109-2002,  
24 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
25 JULY 1, 2003]: Sec. 3. (a) An applicant must apply for a child care  
26 home license on forms provided by the division.

27 (b) An applicant must submit the required information as part of the  
28 application.

29 (c) An applicant must submit with the application a statement  
30 attesting that the applicant has not been:

31 (1) convicted of:

32 (A) a felony;

33 (B) a misdemeanor relating to the health or safety of children;

34 (C) a misdemeanor for operating a child care center without a  
35 license under IC 12-17.2-4-35; or

36 (D) a misdemeanor for operating a child care home without a  
37 license under section 35 of this chapter; and

38 (2) charged with:

39 (A) a felony;

40 (B) a misdemeanor relating to the health or safety of children;

41 (C) a misdemeanor for operating a child care center without a  
42 license under IC 12-17.2-4-35; or

43 (D) a misdemeanor for operating a child care home without a  
44 license under section 35 of this chapter;

45 during the pendency of the application.

46 (d) An applicant must submit the necessary information, forms, or  
47 consents for the division to:

48 (1) conduct a criminal history check on the ~~applicant and the~~  
49 ~~applicant's spouse; and~~

50 (2) **obtain a national criminal history background check on the**  
51 **applicant through the state police department under**

**IC 5-2-5-15.**

(e) An applicant must do the following:

(1) Conduct a criminal history check of the applicant's:

(A) employees;

(B) volunteers; and

(C) household members who are:

(i) at least eighteen (18) years of age; or

(ii) less than eighteen (18) years of age but have previously been waived from juvenile court to adult court.

(2) Maintain records of each criminal history check.

SECTION 14. IC 12-17.2-5-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 12. (a) A license for a child care home expires two (2) years after the date of issuance, unless revoked, modified to a probationary or suspended status, or voluntarily returned.

(b) A license issued under this chapter:

(1) is not transferable;

(2) applies only to the licensee and the location stated in the application; and

(3) remains the property of the division.

(c) A current license shall be publicly displayed.

(d) When a licensee submits a timely application for renewal, the current license shall remain in effect until the division issues a license or denies the application.

**(e) A licensee shall publicly display and make available, as a handout, written documentation of:**

**(1) any changes in the status of the licensee's license; and**

**(2) a telephone number and an Internet site where information may be obtained from the division regarding:**

**(A) the current status of the licensee's license;**

**(B) any complaints filed with the division concerning the licensee; and**

**(C) violations of this article by the licensee; and**

**(3) a telephone number of the office of the Indiana child care resource and referral program of the county in which the child care home is located.**

SECTION 15. IC 12-17.2-5-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 14. (a) The division may grant a probationary license to a licensee who is temporarily unable to comply with a rule if:

(1) the noncompliance does not present an immediate threat to the health and well-being of the children;

(2) the licensee files a plan with the division to correct the areas of noncompliance within the probationary period; and

(3) the division approves the plan.

(b) A probationary license is valid for not more than six (6) months. The division may extend a probationary license for one (1) additional period of six (6) months.

(c) An existing license is invalidated when a probationary license is issued.

(d) At the expiration of the probationary license, the division shall



reinstatement the original license to the end of the original term of the license, issue a new license, or revoke the license.

(e) Upon receipt of a probationary license, the licensee shall return to the division the previously issued license.

**(f) The division shall:**

**(1) upon issuing a probationary license under this section, provide written notice to the licensee that the division will provide the notice required under subdivision (2); and**

**(2) not more than seven (7) days after issuing a probationary license under this section, publish notice under IC 5-3-1 and provide written notice to the parent or guardian of each child enrolled in the child care home of the:**

**(A) issuance of the probationary license; and**

**(B) reason for the issuance of the probationary license.**

SECTION 16. IC 12-17.2-5-18.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 18.7. (a) The division shall adopt rules under IC 4-22-2 to establish a list of violations of this article that would pose an immediate threat to the life or well-being of a child in the care of a licensee.**

**(b) If an employee or agent of the division determines that a violation described in subsection (a) exists, the division shall:**

**(1) issue an emergency or another temporary order under IC 4-21.5-4 requiring the licensee to immediately cease operation of the child care home; and**

**(2) contact the parent or guardian of each child enrolled in the child care home to inform the parent or guardian:**

**(A) that the division has issued an order to require the licensee to cease operation of the child care home; and**

**(B) of the reason for the order to cease operation;**

**pending the outcome of proceedings conducted under sections 20 through 22 of this chapter.**

**(c) An emergency or another temporary order issued by an employee or agent of the division must be approved by the director.**

**(d) An approval under subsection (c) may be communicated orally to the employee or agent issuing the order. However, the division shall maintain a written record of the approval.**

SECTION 17. IC 12-17.2-5-19 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 19. Except as provided in section 18.7 or 29 of this chapter, the division shall give a licensee thirty (30) calendar days written notice by certified mail of an enforcement action. The licensee shall also be provided with the opportunity for an informal meeting with the division. The licensee must request the meeting within ten (10) working days after receipt of the certified notice.**

SECTION 18. IC 12-17.2-5-20 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 20. (a) An administrative hearing concerning the decision of the division to impose a sanction under this chapter shall be provided upon a written request by the child care home. The request must be made within thirty**

(30) calendar days after receiving notice under section **18.7 or** 19 of this chapter. The written request must be made separately from an informal meeting request made under section 19 of this chapter.

(b) The administrative hearing shall be held within sixty (60) calendar days after receiving the written request.

SECTION 19. IC 12-17.2-5-27 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 27. (a) After a license is revoked or suspended, the division shall **publish notice under IC 5-3-1 and** notify in writing each person responsible for the children in care ~~to ensure that those children are removed; that the license has been revoked or suspended.~~

(b) The written notice shall be sent to the last known address of the person responsible for the child in care and shall state that the license of the child care home has been revoked or suspended.

SECTION 20. IC 12-17.6-1-6, AS ADDED BY P.L.273-1999, SECTION 177, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 6. "Provider" has the meaning set forth in ~~IC 12-7-2-149(2); IC 12-7-2-149.1(2).~~

SECTION 21. [EFFECTIVE JULY 1, 2003] IC 12-7-2-149 IS REPEALED.

(Reference is to EHB 1689 as reprinted April 1, 2003.)

**Conference Committee Report**  
**on**  
**Engrossed House Bill 1689**

**S**igned by:

---

Representative Weinzapfel  
Chairperson

---

Senator Lawson C

---

Representative Budak

---

Senator Howard

**House Conferees**

**Senate Conferees**